

## **Exhibit 9**

CONFIDENTIAL  
John Van Merkensteijn – April 19, 2021

Page 1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 CASE NO. 18-MD-2865 (LAK)

4 IN RE: )  
5 )  
6 CUSTOMS AND TAX ADMINISTRATION OF )  
7 THE KINGDOM OF DENMARK )  
8 (SKATTEFORVALTNINGEN) TAX REFUND )  
9 SCHEME LITIGATION )  
This document relates to case nos. )  
19-cv-01783; 19-cv-01788; 19-cv-01794; )  
19-cv-01798; 19-cv-01918 )

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11  
12 C O N F I D E N T I A L

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14  
15 REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL  
16 EXAMINATION OF  
17 JOHN VAN MERKENSTEIJN  
18 DATE: April 19, 2021

19  
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21  
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23  
24  
25 REPORTED BY: MICHAEL FRIEDMAN, CCR

CONFIDENTIAL  
John Van Merkensteijn – April 19, 2021

Page 2

1                   TRANSCRIPT of the videotaped deposition  
2   of the witness, called for Oral Examination in the  
3   above-captioned matter, said deposition being taken  
4   by and before MICHAEL FRIEDMAN, a Notary Public and  
5   Certified Court Reporter of the State of New Jersey,  
6   via WEBEX, ALL PARTIES REMOTE, on April 19, 2021,  
7   commencing at approximately 10:32 in the morning.

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CONFIDENTIAL  
John Van Merkensteijn – April 19, 2021

Page 13

1 JOHN VAN MERKENSTEIJN,  
2 called as a witness, having been first  
3 duly sworn according to law, testifies as follows:  
4  
5

6 EXAMINATION BY MR. WEINSTEIN:

7 Q Okay. Sir, my name the Marc  
8 Weinstein. I'm with the firm of Hughes,  
9 Hubbard & Reed, LLP. We represent the  
10 plaintiff SKAT in this deposition. I will be  
11 asking you the questions throughout the day.

12 Can you start by just telling us  
13 how you pronounce your last name?

14 A Van Merkensteijn.

15 Q Okay. Well, I now have no excuses  
16 if I get it wrong.

17 A Okay.

18 Q Okay. Mr. Van Merkensteijn, during  
19 the day, as you can tell, we have a court  
20 reporter —

21 A I'm hearing a lot of echo or static  
22 or something.

23 THE VIDEOGRAPHER: Stand by. The  
24 time is 10:34 a.m. and we're going off  
25 the record.

CONFIDENTIAL  
John Van Merkensteijn – April 19, 2021

Page 77

1 A Well, I assume so.

2 Q Yeah. 6,250,000 shares?

3 A Before I say yes, let me look.

4 (Witness reviewing.)

5 Okay. Yes.

6 Q Did you have any understanding as  
7 to how stock loan transactions were a part of  
8 the strategy?

9 A It would have been a method of  
10 borrowing money to pay for the shares.

11 Q Okay. So earlier, when you  
12 referred to borrowing money, it's through  
13 this kind of transaction?

14 A However they wanted to do it. But  
15 this is one way to borrow against the stock.

16 Q Right. And were you aware that in  
17 each case in which one of the pension plans  
18 purchased stock, it made a stock lending  
19 transaction for the same amount?

20 A I mean, more or less, yeah.

21 Q The counterparty in the trade is  
22 Aquila (Cayman)?

23 A Where -- oh, yeah. Okay.

24 I see that.

25 Q Are you familiar with an entity

CONFIDENTIAL  
John Van Merkensteijn – April 19, 2021

Page 78

1 called Aquila (Cayman)?

2 A No, sir.

3 Q All right. And prior to the  
4 Xiphias plan having entered into stock  
5 lending deals with that entity, did you have  
6 any knowledge of what it was?

7 A No, I have no knowledge.

8 Q Do you know who introduced that  
9 entity into the transaction?

10 A I don't know, no.

11 Q All right. Was it your  
12 understanding that Solo Capital was bringing  
13 in the various counterparties?

14 A Yes, sir.

15 Q Okay. So here we saw a purchase of  
16 future and a stock loan for the TDC stock.

17 Was it your understanding that Solo  
18 arranged to have those various counterparties  
19 involved?

20 A Yes. Solo, for us, was one-stop  
21 shopping. They provided each of the parties  
22 that we needed to do the transaction.

23 Q Okay. With respect to the purchase  
24 of the stock, at the time, did you have any  
25 understanding of any arrangement that had

CONFIDENTIAL  
John Van Merkensteijn – April 19, 2021

Page 80

1 Q We can hear you now.

2 Can you hear me?

3 A Yes. Now I hear you through my  
4 headset.

5 MS. MCCARTHY: And we hear you  
6 well.

7 A And I have a circle going around  
8 and around and around. There we go. Okay.

9 I don't know why it decided to do  
10 that.

11 So where were we?

12 MR. WEINSTEIN: Mike, maybe you  
13 could read the last question and the  
14 beginning of the answer?

15 (Whereupon the record was read back  
16 by the reporter.)

17 A So I was responding to your earlier  
18 question where I said, "Did I do any due  
19 diligence on any of these parties?" And I  
20 remember there was one that I did go visit  
21 the office and meet the people.

22 Q Which one was that?

23 A That was called Old Park Lane.

24 Q Okay. Is it fair to say that with  
25 respect to a stock lending counterparty like

CONFIDENTIAL  
John Van Merkensteijn – April 19, 2021

Page 81

1      Aquila (Cayman), that you were not familiar  
2      with the financial condition of the entity?

3            A      Correct.

4            Q      All right. You would not know  
5      where Aquila (Cayman) would get the money to  
6      provide the financing for the plan's  
7      purchase.

8                      Is that right?

9            A      No. I didn't know anything about  
10     Aquila.

11          Q      Can you turn to Exhibit 2275?

12                      MR. WEINSTEIN: Mark this as 2275.

13                      (Whereupon the above mentioned was  
14      marked for Identification.)

15          A      (Witness reviewing.)

16          Q      So the first page of Exhibit 2275  
17      is a cover letter from Acupay to SKAT  
18      attaching a reclaim application for the  
19      Xiphias Pension Plan.

20                      Do you see that?

21          A      I see that.

22          Q      All right. Were you aware that  
23      after the Xiphias plan made purchases of  
24      Danish securities, that Acupay would file  
25      reclaim applications to SKAT for refunds?



CONFIDENTIAL  
John Van Merkensteijn – April 19, 2021

Page 216

1 know, split the profits and try to get as  
2 close to a third, a third, a third, as we  
3 discussed.

4 But at one point or another, either  
5 Rob took the leading role or Rich took the  
6 leading role.

7 Q And regardless of who took the  
8 leading role at any point in time, were the  
9 same activities executed on behalf of all the  
10 plans?

11 MS. MCCARTHY: Objection to form.

12 A I don't know.

13 Q Okay. All right. I'm going to  
14 just -- rather than going through a bunch of  
15 documents, I'm going to list a number of  
16 stock lending counterparties with which the  
17 Voojo plan onboarded.

18 And just let me know if you've had  
19 heard of any of them prior to being involved  
20 with the Voojo plan.

21 Neoteric?

22 A No.

23 Q Colbrook?

24 A No.

25 Q Gnosis?

CONFIDENTIAL  
John Van Merkensteijn – April 19, 2021

Page 217

1           A     No.

2           Q     Philo Capital? That's P-H-I-L-O?

3           A     No.

4           Q     Treehurst?

5           A     No.

6           Q     Equal Services?

7           A     What?

8           Q     Equal Services?

9           A     Equal? No.

10          Q     Diverse Vision?

11          A     No.

12          Q     Fintech Consultancy?

13          A     No.

14          Q     Trance Services?

15          A     No.

16          Q     Prince Solutions?

17          A     No.

18          Q     TechEvolve?

19          A     No.

20          Q     And Principal Markets?

21          A     No.

22          Q     Okay. And do you know if anyone on

23               behalf of the group performed any due

24               diligence with respect to these potential

25               stock lending counterparties prior to

CONFIDENTIAL  
John Van Merkensteijn – April 19, 2021

Page 218

1 onboarding?

2 A I don't know.

3 Q Can you turn, please, to  
4 Exhibit 2206?

5 MR. WEINSTEIN: Mark this as 2206.

6 (Whereupon the above mentioned was  
7 marked for Identification.)

8 A The books are getting heavier.  
9 Okay.

10 Q This is an e-mail from Mr. LaRosa  
11 in February of 2014. This says, "Folks,  
12 seems that Solo wants us to trade with a  
13 forward instead of futures going forward.  
14 Please see the language below that they wish  
15 me to send out to Amalthea, who will be  
16 providing that service."

17 Were you part of any discussions in  
18 which -- that you learned that Solo wanted to  
19 switch from using futures to forwards?

20 A No, I was not.

21 Q Did you have an understanding as to  
22 why that switch was made?

23 A I don't know why Solo wanted us to  
24 change that.

25 Q Did you know if Solo was getting

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John Van Merkensteijn – April 20, 2021

Page 275

1                   We can figure it out, but.

2           Q     What statements would you look at  
3     in order to figure that all out?

4           A     I had an accountant, and gave him  
5     all the information, and asked him to  
6     organize some kind of books so that we could  
7     keep track of what happened.

8           Q     Is that Ron Carlen at Citrin  
9     Cooperman?

10          A     Yes.

11          Q     Do you have a ballpark sense of how  
12     much money you and your plans earned from the  
13     participation in dividend arbitrage trading  
14     in Denmark?

15          A     I have a ballpark figure that could  
16     be right or wrong, but somebody asked me that  
17     the other day. I would guess in excess of  
18     35 million or so.

19                   Maybe that includes Belgium, I  
20     don't know. That's just a number that I have  
21     in my head.

22          Q     Would the large majority of your  
23     profits come from Denmark?

24          A     The majority comes from Denmark.

25          Q     Do you have a sense overall of the